

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:08-HC-2160-BO

GERALD WAYNE TIMMS, )  
)  
Petitioner, )  
)  
v. )  
)  
TRACY JOHNS, )  
Warden, FCI Butner, )  
)  
Respondent. )

ORDER

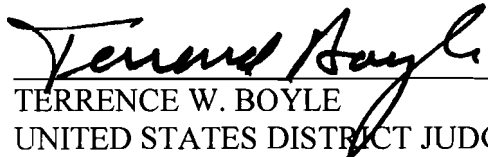
This matter is before the Court on Respondent's Motion to Strike Pleading [DE 81]. Petitioner, Mr. Timms, through counsel filed on May 17, 2012, a Superseding Petition for Writ of Habeas Corpus and Request for Evidentiary Hearing [DE 80]. Respondent has moved to strike Mr. Timm's pleading as no notice of appearance has been filed by counsel in this matter and as this case has been closed.

In its opinion in this matter entered December 6, 2010, the Court of Appeals held that the proper procedure for Mr. Timms to challenge his certification and detention under § 4248 is in the commitment action and through pursuit of appellate review of any decision in that case by which he is aggrieved. The Court of Appeals further instructed that the habeas petition be dismissed without prejudice.

Mr. Timms' commitment action is still pending before the Court, and a decision on the merits of Mr. Timms' commitment under § 4248 is forthcoming. Accordingly, as Mr. Timms' has not yet exhausted the alternative remedies available for review of his detention in the commitment action, this Court has no jurisdiction over Mr. Timms' habeas petition. The government's Motion to Strike

Pleading is therefore GRANTED.

SO ORDERED, this 25 day of May, 2012.

  
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TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE